

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE
DETERMINATION OF THE
FAIR MARKET VALUE OF
THE PLANT AND PROPERTY
OF PENNICHUCK WATER
WORKS, INC., PENNICHUCK
EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT
COMPANY, INC.

DOCKET NO. _____

PETITION FOR VALUATION PURSUANT TO RSA 38:9

The City of Nashua (hereinafter “Nashua” or the “City”) hereby files this Petition for the determination of the fair market value of the plant and property of Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., and Pittsfield Aqueduct Company, Inc., pursuant to RSA 38:9. In support of this Petition, Nashua states and alleges as follows:

1. Nashua is the second largest City in the State of New Hampshire with a population of 86,605 persons. The City was incorporated by Act of the New Hampshire Legislature in 1853 and presently operates under City Charter as a Mayor and Alderman form of city government. The City’s Mayor and Board of Alderman (the “BMA”) is charged with the duty and responsibility to protect and promote the general welfare of the City’s residents.

2. Pennichuck Water Works, Inc., (PWW) is a New Hampshire Corporation and a public utility as defined in RSA 362:2, with a principal place of business in Nashua, New Hampshire. PWW serves approximately 21,993 customers in the City of Nashua and the Towns of Amherst, Hollis, Merrimack and Milford, New Hampshire. PWW also owns and operates eleven community water systems in Bedford, East Derry, Epping, Milford, New Market,

Plaistow and Salem, New Hampshire. The primary source of water for PWW is the Pennichuck Brook and Merrimack River water sheds. The Pennichuck Brook watershed lies in the Towns of Nashua, Merrimack, Amherst, Milford and Hollis. The watershed drains to a chain of ponds, Stump Pond, Pennichuck Pond, Holtz Pond, Bowers Pond, Harris Pond and Supply Pond. Water is withdrawn from Harris Pond and brought to a water treatment plant. During drought or dry months, water from the Merrimack River is discharged to Bowers Pond to supplement the demand at the water treatment plant.

3. Pennichuck East Utility, Inc., (PEU) is a New Hampshire Corporation and a public utility as defined in RSA 362:2, with a principal place of business in Nashua, New Hampshire. PEU serves approximately 4,240 customers in the Towns of Atkinson, Derry, Hooksett, Londonderry, Pelham, Plaistow, Raymond, Sandown and Windham, New Hampshire. The primary source of water for PEU is a well system owned by the Town of Hudson, located in Litchfield, New Hampshire. This water is supplemented by water from the Manchester Water Works.

4. Pittsfield Aqueduct Company (PAC) is a New Hampshire Corporation and a public utility as defined in RSA 362:2, with a principal place of business in Nashua, New Hampshire. PAC serves approximately 633 customers in the Town of Pittsfield, New Hampshire. The sole source of water for PAC is Barry Pond, located in Pittsfield, New Hampshire.

5. PWW, PEU and PAC are wholly owned subsidiaries of Pennichuck Corporation (“Pennichuck”) a holding company with a principal place of business in Nashua, New Hampshire. Pennichuck also owns two other wholly owned subsidiaries, Pennichuck Water Service Company and the Southwood Corporation, neither of which is a public utility as defined by RSA 362:2.

6. By Petition dated June 14, 2002, PWW, PEU and PAC petitioned the New Hampshire Public Utilities Commission (“The Commission”) pursuant to RSA 369:8 (II) and RSA 374:33 to approve the indirect acquisition of PWW, PEU and PAC by Philadelphia Suburban Corporation (“PSC”) to be accomplished through the merger of Pennichuck, the parent company of PWW, PEU and PAC into a wholly owned subsidiary of PSC.

7. Concerned about the effect of the merger on its businesses and residents and its own use (fire protection and domestic), the City intervened on July 2, 2002 in the Docket established by the Commission regarding the merger (DWO2-126) and engaged consultants to conduct a comprehensive review of the Pennichuck system. Simultaneously, the City participated in discussions and meetings with citizens and representatives of other municipalities relating to the formation of a regional water district.

8. By report dated November 1, 2002, the City’s consultants, Rizzo Associates and George E. Sansoucy, P.E., inter alia, recommended that the City consider public ownership of the Pennichuck System, either on its own or through a regional water authority.

9. On November 26, 2002, the Board of Alderman, pursuant to RSA 38:3, by a vote of 14 to 1, determined that it was expedient for the City to establish a water works system and to acquire all or a portion of the water works system currently serving the inhabitants of the City and others. The Board further authorized the Mayor to support, along with other municipalities, proposed legislation to establish regional water districts, and in particular, to support the formation of a regional water district including the City. The Mayor was further authorized to negotiate terms for City participation in such a regional water district. The Resolution of the Board of Alderman was approved by the Mayor on December 2, 2002. A copy of the November 26, 2002 Resolution is attached as Exhibit A.

10. On January 14, 2003, pursuant to RSA 38:3, a special meeting of the voters of the City was held as a special election for the purpose of confirming the adoption of the Resolution of the Board of Alderman, determining that it was expedient for the City to establish a water works system and to acquire all or a portion of the water works system currently serving the inhabitants of the City and others. The resolution of the Board of Alderman was confirmed by a margin of 6,525 to 1,867 or a 78% majority. The overwhelming vote of the Board of Aldermen, confirmed by the voters of Nashua creates a rebuttable presumption that establishing and acquiring a water works system are in the public interest under RSA 38:3.

11. Notwithstanding the rebuttable presumption created under RSA 38:3, the City asserts that it is in the public interest and there is a public good for it to acquire the assets of PWW, PEU and PAC because of the benefits associated with supplying its water users and the other water users in the Pennichuck rate base with relatively inexpensive water; and that there is no greater public harm sufficient to rebut the RSA 38:3 presumption. In re Public Service Company of New Hampshire, Petition for Valuation of J. Brodie Smith Hydro-Electric Station, DE 00-211, Order No. 24,086, November 15, 200.

12. On February 4, 2003, Pennichuck and PSC terminated the Merger by mutual agreement.

13. On February 5, 2003, the City, pursuant to RSA 38:6, notified PWW, PEU and PAC of the vote to establish a water works system and to acquire their assets and made inquiry as to whether each of them elected to sell that portion of its plant identified by the City. Copies of the Notice to PWW, PEU and PAC are attached as Exhibits B, C, and D, respectively.

14. On February 20, 2003, House Bill 361, which provides for the creation of regional water districts with bonding powers under RSA Chapter 33-B, passed the New Hampshire

House. It was subsequently approved by the Senate and signed into law by the Governor, effective July 18, 2004, as Laws 2003, Chapter 281.

15. On March 25, 2003, PWW, PEU and PAC responded to the City's Notice and Inquiry, pursuant to RSA 38:7, in the negative. Copies of the responses of PWW, PEU and PAC are attached as Exhibits E, F, and G, respectively.

16. The City asserts that the following Statutes authorize it to acquire assets beyond its City boundaries: RSA 38:2, 6, 9, 10, 11, and 14. Acquiring such assets is further in the public interest because of the passage of Chapter 281 and Nashua's participation in, and support of, a regional water district. It is the present intention of Nashua, upon completion of the acquisition of the assets of PWW, PEU and PAC and the successful negotiation of a satisfactory regional water district charter, to convey or otherwise transfer such assets to the newly formed regional water district.

17. Based upon its investigation, Nashua has determined that there are no significant impediments or barriers to acquisition of these assets; that the acquisition by Nashua would be in the public interest; and that acquisition, ownership and control of these facilities by Nashua, or the regional water district, is essential to the economic viability and orderly economic growth of the City and Region.

18. Following the negative response by PWW, PEU and PAC on March 25, 2003, the parties engaged in negotiations pursuant to which Nashua would have acquired all of the assets of Pennichuck, including those of PWW, PEU and PAC. Those negotiations were terminated by Pennichuck on January 27, 2004.

19. On February 4, 2004, immediately following its termination of the negotiations,

Pennichuck filed a Petition for Declaratory Judgment (the “Petition”) with the Hillsborough County Superior Court, Southern District, seeking a ruling that RSA 38, by failing to provide a jury trial fails to provide it equal protection under the N.H. Constitution; that Nashua’s failure to file this petition immediately has deprived it of its right to engage in commerce and constitutes an unconstitutional temporary and permanent taking of its private property rights; that the period for Nashua to file this petition has expired because of a short limitations period and laches; and that Nashua may not acquire any property outside its limits. The Petition is returnable April 6, 2004. A copy of the Petition is attached as Exhibit H.

20. Pursuant to RSA 38:9, if the municipality and the utility fail to agree upon a price or cannot agree as to how much of the plant and property lying within or without the municipality the public interest requires the municipality to purchase, **either** the municipality or the utility may petition the Commission for a determination of these questions. Following the termination of the negotiations by Pennichuck, Nashua has determined that agreement is not possible.

WHEREFORE, the City of Nashua, respectfully requests an Order or other directive of the Commission providing for the following:

- a. Granting this Petition for a determination of the fair market value of the plant and property of PWW, PEU and PAC;
- b. Finding that the acquisition of the assets of PWW, PEU and PAC by the City is in the public interest.
- c. Directing the Executive Director and Secretary of the Commission to open a Docket for determination of the fair market value of such plant and property; and

- d. Taking all other procedural and substantive actions necessary to determine the fair market value of such plant and property and to allow the City of Nashua to acquire the same.

Respectfully submitted,
CITY OF NASHUA

By its attorneys:
Upton & Hatfield, LLP

Dated: March_____, 2004

Robert Upton, II, Esquire
23 Seavey Street – PO Box 2242
North Conway, NH 03860
(603)356-3332
ru2@upton-hatfield.com

Nashua Corporation Counsel
David R. Connell, Esquire
229 Main Street – Box 2019
Nashua, NH 03061-2019
(603) 589-3250
connelld@ci.nashua.nh.us